



TRIAL / GUATEMALA TRIALS →

DECEMBER 14, 2020 by JO-MARIE BURT AND PAULO ESTRADA

The Future of War Crimes Prosecutions in Guatemala

☰ GUATEMALA TRIALS, SUMMARY

Editorial note: The Open Society Justice Initiative is ending its monitoring of grave crimes trials in Guatemala through its International Justice Monitor website. This is the final post. The Justice Initiative expresses its gratitude to Jo-Marie Burt and Paulo Estrada for their years of dedication in monitoring and reporting on these proceedings. To keep abreast of justice developments in Guatemala, follow their project, Verdad y Justicia en Guatemala, on [Twitter](#).

When Alejandro Giammattei was sworn in as president of Guatemala on January 14, 2020, anti-impunity advocates sounded the alarm that, given his reported close ties to Guatemala's [‘hidden powers,’](#) the rollback of the country's efforts to combat corruption and impunity would accelerate under his rule. They worried that Giammattei would go even further than the previous government of Jimmy Morales, whose determination to end the anti-corruption crusade culminated in last year's [shuttering](#) of the International Commission Against Impunity in Guatemala (CICIG).

The events of the past eleven months have largely borne out that prediction. Giammattei has shuttered key [institutions](#) established by the peace accords to address the legacy of grave human rights violations committed by the state

during the 36-year internal armed conflict, including the Secretariat of Peace (SEPAZ) and the Presidential Human Rights Commission (COPREDEH). Attacks against the Specialized Anti-corruption Unit (FECI) in the Attorney General's Office, once a beacon for the entire region for its investigations into high-level corruption, have [continued](#) unabated. After a hostile [takeover](#) during the Morales administration, the Historic Archive of the National Police (AHPN), which provided key [documents](#) that helped clarify the situation of dozens of war-time crimes in Guatemala, has now all but disappeared, its online archive [no longer accessible to the public](#) or to victims of human rights violations.

Efforts to derail criminal prosecutions for wartime atrocities (such as the campaign to pass a [blanket amnesty law](#) last year) have taken a back seat as the COVID-19 pandemic has forced these cases into a holding pattern. Judges thwarted efforts by several individuals convicted of grave crimes to obtain their [freedom](#), claiming concern about contracting COVID-19, citing abundant evidence that the detainees have access to superior health care in the Military Hospital. In the Molina Theissen case, a judge [determined](#) that those convicted of aggravated sexual assault cannot be released until completion of their prison terms. In recent weeks, a few cases have moved forward, and trial dates have been scheduled for early 2021. Other cases are still waiting for court rulings to determine whether the accused will stand trial.

In this final wrap-up of grave crimes cases for *International Justice Monitor*, we provide a brief update on the cases pending in Guatemala's domestic courts.

Molina Theissen

In May 2018, a court [convicted](#) four retired senior military officials for crimes against humanity, aggravated sexual violence, and enforced disappearance in the Molina Theissen case. A hearing scheduled last February to initiate review of the pending appeals in the case was [suspended](#). No new date has yet been set.

However, a hearing has been scheduled for February 2021 to review charges made by defense attorney Karen Fisher, who continues to assert that Marco Antonio Molina Theissen is still alive. A court [dismissed](#) Fisher's initial

complaint in 2019, but a court granted her appeal, giving rise to this newest iteration of Fisher's assertion that the husband of Marco Antonio's sister, María Eugenia, is actually Marco Antonio. Guatemalan news media has given extensive coverage to Fisher's allegations, which have no basis in fact.

Lucas García – Maya Ixil Genocide

A court [indicted](#) three senior military officials for genocide and crimes against humanity against the Maya Ixil population during the government of Romeo Lucas García (1978-1982). The [evidentiary phase hearings](#) against the accused took place in March 2020. The Attorney General's Office and civil parties [accused](#) retired general and former army chief Benedicto Lucas García, retired general and former military intelligence chief Manuel Callejas y Callejas, and retired coronel and former military operations chief César Octavio Noguera Argueta, all members of the Army High Command, of the [crimes](#) of genocide, crimes against humanity and forced disappearance against the Maya Ixil population.

Judge Miguel Ángel Gálvez was [scheduled](#) to deliver his ruling as to whether there was sufficient evidence to send the case to trial when the COVID-19 pandemic shut down the courts. He has yet to issue his ruling. On November 20, 2020, the Guatemalan Army [reported](#) that Noguera Argueta had died.

Maya Ixil Genocide Trial

High Risk Tribunal "C" was scheduled to initiate evidentiary phase proceedings against retired general Luis Enrique Mendoza García, who was chief of military operations was the third in command of the Guatemalan army during the government of dictator Efraín Ríos Montt (1982-1983). Originally accused in 2011 along with Ríos Montt and other members of the High Command, Mendoza García eluded arrest and was a fugitive until June of 2019, when he [was arrested](#) at a polling station casting his vote during Guatemala's general elections.

Two courts have found that the Guatemalan army committed [genocide](#) during the Ríos Montt government. However, the 2013 [conviction of Ríos Montt](#) was [vacated](#) by the Constitutional Court, and [he died in 2018](#) in the midst of a retrial. His chief of military intelligence, Mauricio Rodríguez Sánchez, was [acquitted](#) of all charges in 2012, and again in 2019.

Sanchez, was [acquitted](#) of all charges in 2015, and again in 2016.

CREOMPAZ

The mass forced disappearance case, known as [the CREOMPAZ case](#), remains stalled. One of the largest cases of [enforced disappearance](#) in Latin America's history, the case centers on the discovery of the human remains of 565 individuals in 85 clandestine graves on the grounds of the former Military Zone No. 21 in Cobán, Alta Verapaz. To date, more than 160 of these have been positively identified as victims of the armed conflict.

Guatemalan officials arrested fourteen senior military officials in the case in January 2016. In June 2016, a judge [ruled](#) that there was sufficient evidence to proceed to trial against eight former military officials. Among these indicted are former army chief Benedicto Lucas García, who in May 2018 was convicted in the Molina Theissen case and who also faces charges in the Maya Ixil Lucas genocide case.

The CREOMPAZ case remains stalled due to a series of appeals filed by the plaintiffs challenging the exclusion of nearly 80 percent of the victims from the original accusation by pretrial Judge Claudette Domínguez.

In April, lawyer Karen Fisher filed a [protective measure](#) seeking the liberty of several officials charged in this case, [without success](#).

Maya Achi Sexual Violence

In January, the United States [deported](#) a former member of the Rabinal civil defense patrol, Francisco Cuxum Alvarado, to Guatemala. He was immediately arrested for his alleged role in the Maya Achi sexual violence case. Judge Gálvez [indicted](#) Cuxum in February, and the evidentiary phase hearings were set to begin in May. However, the pandemic led to their delay.

This indictment reopened the Maya Achi sexual violence case, which hit a major stumbling block last year when Judge Domínguez [dismissed the charges](#) against six men who had been arrested and charged in the case (among them one of Cuxum's brothers) and ordered their release. The plaintiffs have challenged this ruling in court and hope to have it overturned.

Dos Erres Massacre

A judge ruled that there is sufficient evidence to prosecute former special forces soldier Gilberto Jordán for his alleged role in the 1982 Dos Erres massacre, in which soldiers killed some 200 villagers they believed to be members of a guerrilla group. Jordán faces [charges](#) of crimes against humanity for his direct participation in the massacre and of aggravated sexual assault. Jordán was deported in March from the United States after serving ten years in prison for immigration fraud and for lying on immigration forms about his role in the Dos Erres massacre. He admitted to U.S. authorities that he had been the first to throw a child into the community well, setting off the gruesome killing spree at Las Dos Erres. High Risk Court “A,” presided over by Yassmín Barrios, will hear the case, starting in January 2021.

This will be the fourth trial in the Dos Erres massacre case. Guatemalan courts have [convicted](#) six men—five ex-Kaibil soldiers and one army official—for their responsibility in the massacre. Several alleged perpetrators remain at large. Two alleged perpetrators are currently [in custody](#) in the United States.

Tululché Massacre

In January, a judge in the department of El Quiché [dismissed](#) charges against [Juan Alecio Samayoa Cabrera](#) for his role in the Tululché massacre and other grave crimes and ordered his immediate release. Prosecutors allege that Samayoa, who had been living in the United States for decades and was deported in late 2019, was a chief military commissioner in Chinique, El Quiché. While in U.S. custody, Samayoa [admitted](#) to having commanded a paramilitary unit of 500 men in Chinique, but claimed to be just “an assistant” during the proceedings in El Quiché.

The victims appealed the decision. At a hearing on November 25, at which the plaintiffs presented new evidence, the pretrial judge reissued the arrest warrant against Samayoa.

The Future: Impunity for All?

In addition to these cases, there are more than 1,000 complaints before the Attorney General’s Office. Of these, at least a dozen cases have a sentence

from the Inter-American Court of Human Rights finding the State of Guatemala responsible for the crimes and ordering the investigation, prosecution, and punishment of those responsible. This is the case, for example, in the [Military Diary](#) case. The Inter-American Court issues its ruling in 2012, but to date there have been no arrests in the case.

Victims' groups continue to demand their rights to justice for the abuses they suffered during the internal armed conflict. COVID-19 has temporarily frozen the dynamics we reported on at the start of the year. For Guatemala, 2021 will be decisive in determining whether the country is held hostage to the cabal of dark forces that want to see a restoration of impunity for all or is able to continue its bold and unlikely experiment in justice for wartime atrocities.

[Jo-Marie Burt](#) is an Associate Professor of Political Science and Latin American Studies at George Mason University. She is also a Senior Fellow at the Washington Office on Latin America (WOLA). Paulo Estrada is a human rights activist, archaeology student at San Carlos University, and civil party in the Military Diary case.

← PREVIOUS POST

Judge Orders Trial of Ex-Kaibil for his role in Dos Erres Massacre

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